

FAQ on Mootness

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What does mootness mean?

Legal proceedings are 'moot' where there is no longer any legal dispute between the parties. The Irish Supreme Court in [Goold -v- Collins](#) applied a Canadian definition of mootness in [Borowski -v- Canada](#), namely: "when a decision will not have the effect of resolving some controversy affecting or potentially affecting the rights of parties".

Why do courts apply the doctrine of mootness?

Three main reasons were outlined in [Borowski -v- Canada](#): that the resolution of legal disputes in common law jurisdictions is rooted in the adversarial system; judicial resources must be used properly; and the separation of powers must be respected.

Why is mootness an issue in public interest litigation?

Public interest litigation seeks to change the law as well as securing a benefit for the individual. It often concerns systemic problems. An issue may be settled for the individual and yet be bound to recur, leaving a systemic problem unresolved.

What happens where an issue is bound to recur?

The Court may decide that an issue is not moot if it is "capable of repetition yet evading review", see [Honig -v- Doe](#). Where an issue concerns a body exercising statutory functions and powers and its determination would impact future cases, the Court may proceed to issue a decision, see [Crilly -v- TJ Farrington Ltd](#), [O'Brien -v- The Personal Injuries Assessment Board](#) and [Irwin -v- Deasy](#).

What happens where the legislation under challenge has since lapsed?

Where a case concerns the constitutionality of temporary legislation which is likely to be re-enacted, the Court may nevertheless decide the case on the basis that the legislation requires scrutiny, see [Condon & Ors -v- Minister for Labour and the Attorney General](#).

What happens if an area of law requires clarification?

It is not the Court's role to issue "advisory judgments" (the Article 26 reference is a notable exception confirming this rule). The Court's purpose is to adjudicate over live disputes between parties.

There may arise circumstances where the Court considers that a matter is not moot and that it is justified to clarify an area of law despite arguments to the contrary.

Instances have included: where the case concerned the "special and possibly unique" category of children and child protection, see [MF -v- Superintendent Ballymun Garda Station & Ors](#); where the nature of the constitutional obligation to educate mentally handicapped children remained an issue, see [O'Donoghue -v- Minister for Health & Ors](#); where a judgment debtor would continue to be affected by the legislation under challenge, see [McCann -v- Monaghan District Court](#).

What is the relationship between 'mootness' and 'standing'?

[Standing \(or 'locus standi'\)](#) refers to the right to be heard by the Court. Whereas standing relates to the person or organisation bringing the claim and is determined at the outset of legal proceedings, mootness relates to the issue and can be determined throughout the legal proceedings.

PILA (Public Interest Law Alliance)

PILA is a public interest law network that seeks to engage the legal community and civil society in using the law to advance social change.

PILA was established in 2009 as a project of FLAC (Free Legal Advice Centres), an independent human rights organisation that promotes equal access to justice for all.

PILA aims to:

1. Driving and growing a diverse alliance of people and organisations who are committed to the development of public interest law in Ireland.
2. Promoting and facilitating pro bono in order to build the capacity of organisations to engage in public interest law work.
3. Mobilising emerging lawyers through clinical legal education programmes with a focus on public interest law.
4. Conducting research on barriers to public interest litigation in Ireland, raising awareness and working to remove these barriers.

What is public interest law?

Public interest law is the law that goes to the very core of our society – affecting the rights, well-being, health, or finances of our people as a whole – but, most commonly, the law that advocates for those who are disadvantaged or marginalised.

It involves using law reform, litigation and legal education as tools of change. We approach public interest law work in its broadest sense; not specifically having to involve the courts, but also assisting vulnerable groups to participate in processes that affect them.

PILA Pro Bono Referral Scheme

Central to PILA's work is the Pro Bono Referral Scheme, which supports social justice non-governmental organisations (NGOs), independent law centres and community organisations in obtaining legal assistance where they do not have the resources or in-house expertise.

PILA receives and assesses requests for assistance from over 110 NGOs, filtering matters that meet our criteria and referring them on to a pro bono barrister, solicitor or law firm with suitable skills.

The Pro Bono Referral Scheme gives NGOs access to:

- Legal advice – on organisational issues or in line with policy and campaign work;
- Law reform working groups – where lawyers and NGOs come together to work to implement social change;
- Litigation support – including pre-litigation advices and casework; and
- Legal education sessions – to better equip NGO staff in navigating the law.